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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re R.P., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. R.P., Defendant and Appellant.	A139050 (Napa County Super. Ct. No. JV17285)

R.P. appeals from a juvenile court order declaring him to be a ward of the court and placing him on probation upon a finding that he committed a misdemeanor second degree burglary by aiding and abetting a burglary. He argues that there was insufficient evidence to sustain the finding. After reviewing the record, as we must, in the light most favorable to the juvenile court's ruling, we disagree. Accordingly, we affirm.

I.
FACTUAL AND PROCEDURAL BACKGROUND

The burglary at the center of this case involved a break-in of a car. On August 5, 2012, the car's owner drove his mother and children to a park in Napa. He parked, locked, and left the car, a Mazda. Some time later, he heard a car alarm and returned to his car. He did not see anyone nearby, so he disarmed the alarm, relocked the car,

rearmed the alarm, and again left the car where it was parked. He later heard the alarm again and returned once more to his car to discover that a door was open and cash was missing from inside.

A Napa police officer responded to a report of a vehicle burglary and received a description of two suspects. The officer soon located and contacted R.P. and C.N., who matched the suspects' descriptions. R.P. "appeared nervous," and he and C.N. "would kind of look at each other prior to answering the [officer's] questions." C.N. acknowledged hearing a car alarm but denied being in or near a car or taking anything from the Mazda. R.P. also admitted hearing a car alarm, but he likewise denied being in or near a car or taking anything out of one. R.P. told the officer that he had not seen C.N. enter a car and did not know whether C.N. had stolen anything.

The officer found $100 in cash in C.N.'s back pocket but found no "contraband" in R.P.'s possession. C.N. and R.P. were placed under arrest.

Three months later, the Napa County District Attorney filed a petition under Welfare and Institutions Code section 602, subdivision (a) seeking to have R.P. declared a ward of the court. The petition alleged one felony count of second degree burglary of a vehicle with intent to commit larceny and any felony and one misdemeanor count of resisting, obstructing, or delaying a peace officer.[1]

At the May 2013 jurisdictional hearing, a witness who lived across the street from where the Mazda was parked testified about the burglary. The witness saw three men, including R.P., walk by the Mazda.[2] One of the other men "went back to the car as they passed it to look inside, and was looking in the car. [The group] then continued down the street." About five minutes later, the witness heard a car alarm. When he looked outside,

[1] The felony charge was brought under Penal Code section 459, and the misdemeanor charge was brought under Penal Code section 148, subdivision (a)(1). Because the latter charge is not at issue in this appeal, we do not discuss the evidence primarily relevant only to it.

[2] No third person was ever identified.

he did not see anyone near the Mazda and "thought it was a cat or something that maybe bumped the car."

About 15 minutes after that, the witness saw R.P. again. R.P. was standing on the corner, about 250 feet from the witness's window, talking on a cell phone and "looking up and down the street." The witness "[d]idn't pay much attention to him" and "thought he was waiting for a ride or something." The witness then saw the man whom he had previously observed looking inside the Mazda reach through the car's window, unlock the door, and open it, setting off the alarm again. R.P. was still looking up and down the street, and to the witness "it appear[ed] that [R.P.] was able to see his companion reaching into the car and unlocking the door." The witness saw the other man take something from inside the Mazda and walk away "at a brisk pace." The other man met R.P. at the corner, and they continued on together.

C.N. and R.P. testified for the defense. C.N. stated that as he and R.P. were walking by the Mazda, C.N. "noticed that there was a window down and money in the car. And so I was [sic], quick as possible, opened the door and grabbed it. [R.P.] wasn't around." C.N. denied making any plans with R.P. before the burglary, characterizing the crime as "get in and go." C.N. pleaded guilty to the crime and was placed on probation.

On cross-examination, C.N. acknowledged that during his arrest he told several lies to the police officer. He also admitted that despite his testimony that R.P. "was not involved," he did not speak up in R.P.'s defense when they were arrested.

R.P. testified that earlier on the day of the burglary, he had gone to C.N.'s house because he was friends with C.N.'s younger brother, and the family was temporarily taking care of R.P.'s dogs for him. A few hours after arriving at the house, R.P. agreed to accompany C.N., whom he did not know as well, to a 7-Eleven store.

R.P. described how he became aware that C.N. was planning to steal something from the Mazda: "Like when I seen him go back [toward the car], and . . . he told me, and I was oh, I'm going to keep straight. And he said okay. And he did what he did, and I was riding [my] skateboard down the street." R.P. wanted "to get away from [C.N.] while he was doing it, so I wouldn't get in trouble. . . . [M]y dad teaches me don't hang

out with people who steal." R.P. admitted that he had lied to the police officer, but he denied that he acted as a lookout or otherwise helped C.N. commit the crime.

The juvenile court sustained the petition's allegations, and it then granted the defense's motion under Penal Code section 17, subdivision (b) to reduce the burglary charge to a misdemeanor. At the dispositional hearing, the court declared R.P. to be a ward of the court and placed him on probation. R.P. timely appealed.

II.
DISCUSSION

A. The Standard of Review.

We review the juvenile court's finding that R.P. committed second degree burglary for substantial evidence, which requires us to " ' "review[] the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find [the elements of the crime] beyond a reasonable doubt." ' " (*In re George T.* (2004) 33 Cal.4th 620, 630-631.) "Whether a person has aided and abetted in the commission of a crime is a question of fact, and on appeal all conflicts in the evidence and attendant reasonable inferences are resolved in favor of the judgment." (*In re Juan G.* (2003) 112 Cal.App.4th 1, 5.) " ' " 'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.' " ' " (*George T.*, at p. 631.)

B. The Elements of Liability for Aiding and Abetting a Crime.

To establish a defendant's liability as an aider and abettor, the People must first establish that a crime was committed. (*People v. Perez* (2005) 35 Cal.4th 1219, 1227.) Then, they must prove the defendant's (1) " 'knowledge of the direct perpetrator's unlawful intent,' " (2) " 'intent to assist in achieving those unlawful ends,' " and (3) " 'conduct . . . that in fact assists the achievement of the crime.' " (*People v. Lopez* (2013) 56 Cal.4th 1028, 1069; see also Pen. Code, § 31.) The requisite intent is the " 'intent to encourage and bring about conduct that is criminal, not the specific intent that

is an element of the target offense.' " (*People v. Montoya* (1994) 7 Cal.4th 1027, 1044.) "[I]t is elemental that one who keeps watch during the commission of [a] crime to facilitate the escape of the criminal is guilty as a principal." (*People v. Hill* (1946) 77 Cal.App.2d 287, 294 (*Hill*); see, e.g., *People v. Silva* (1956) 143 Cal.App.2d 162, 169; *People v. Jaggers* (1932) 120 Cal.App. 733, 735.) R.P. concedes that C.N. committed burglary and that he knew of C.N.'s unlawful intentions, but he argues that the last two elements of liability were not proven because there was insufficient evidence that he intended to aid or performed an act that aided the commission of the crime.

1. Sufficient evidence supports the finding that R.P. acted to aid the burglary.

Whether a defendant acted as an aider and abettor is "determine[d] from the totality of the circumstances proved." (*People v. Morga* (1969) 273 Cal.App.2d 200, 207.) "Mere presence at the scene of a crime is not sufficient to constitute aiding and abetting, nor is the failure to take action to prevent a crime." (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 529-530.) In addition, a defendant's presence in the offender's company before or after the crime does not establish liability as an aider and abettor. (See *Hill*, *supra*, 77 Cal.App.2d at pp. 289, 292-294.) These circumstances, however, are "factors" that may properly be considered when determining whether the defendant is guilty as a principal. (*In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094-1095.)

Here, the testimony that R.P. was looking up and down the street during the burglary was direct evidence of an overt act aiding the crime's commission. R.P. was standing at a four-way intersection, and we agree with the Attorney General that he was in a position to signal to C.N. if he saw officers (or others) approach the scene. Looking up and down a street may be "innocuous" in and of itself, but it is less so when coupled with the understanding that an acquaintance is nearby committing a crime. (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1129.) R.P.'s activity was sufficient to permit the juvenile court to infer that R.P. was acting as a lookout to aid in a crime he knew was in progress.

R.P.'s knowledge of C.N.'s crime distinguishes this case from the two upon which he primarily relies. In *Hill, supra*, 77 Cal.App.2d 287, one of the defendants, Ingram, drove the other defendants to a bar and stayed in the car while they went inside and robbed it. (*Id.* at pp. 288, 290.) The other men did not tell Ingram of their plans. (*Id.* at pp. 288, 290-291.) When the others returned, Ingram was asleep and the car was not running. (*Id.* at pp. 288-291.) They woke him up and asked him to drive away, but they did not tell him what they had done. (*Id.* at pp. 289-292.) Although Ingram had aided the commission of the crime in the sense that his actions helped the other defendants escape, his conviction was reversed because there was no evidence that he knew about the robbery or that he intended to aid its commission. (*Id.* at pp. 288, 293-294.) Unlike Ingram in *Hill*, who was unaware of his acquaintances' criminal activity, R.P. knew of C.N.'s plans and was aware of the crime while it was occurring. This is sufficient to support a reasonable inference that R.P. was acting as a lookout.

In the other case upon which R.P. relies, the defendant was in bed when two other men brought a woman to his home and raped and assaulted her. (*Pinell v. Superior Court* (1965) 232 Cal.App.2d 284, 286.) The defendant learned of the crime several hours later, but "[t]here [was] no evidence that he in any way assisted the other defendants or encouraged them," that he knew of the other defendants' plans beforehand, or that he did anything to the victim. (*Id.* at pp. 287-288.) The appellate court granted a writ of prohibition after concluding that probable cause was lacking to permit the defendant to be prosecuted as an aider and abettor. (*Id.* at pp. 285, 289.) In *Pinell*, unlike here, there was no evidence that the defendant knew of the crime when it happened or knowingly aided or encouraged it.

R.P. argues that his actions did not actually "facilitate the crime" because he would have been unable to effectively "keep[] watch against intrusion" since C.N. was in plain view, he was standing too far away from C.N., and the burglary was over in seconds. But R.P. cites no authority precluding a judgment of guilt because an act facilitating a crime could have been *more* effective. One may be liable as a principal even if the aid or encouragement rendered plays little role in the crime's commission.

(See *People v. Durham* (1969) 70 Cal.2d 171, 184-185, fn. 11 [“ ‘[l]iability attaches to anyone “concerned,” however slight such concern may be’ ”].)

2. Sufficient evidence supports the finding that R.P. intended to aid the burglary.

We also conclude there was sufficient evidence to infer that R.P. *intended* to aid the commission of the crime based on the evidence supporting the finding that he acted as a lookout and on his concession that he was aware of C.N.’s criminal purpose. (See *People v. Beeman* (1984) 35 Cal.3d 547, 558-559.) Although R.P. contends that upon learning of C.N.’s plan, “he immediately voiced his disapproval and took steps to remove himself from that activity,” the juvenile court reasonably could have found that this testimony was not credible. The witness who lived across the street from the parked car testified that he saw R.P. and two others walk by the parked car, heard a car alarm five minutes later, and heard another car alarm 15 minutes after that while R.P. was standing on the corner looking up and down the street. And R.P. does not dispute that he waited until C.N. was done stealing and then continued on with him. (See *In re Lynette G.*, *supra*, 54 Cal.App.3d at p. 1095.) This evidence provided the juvenile court with a basis to reasonably conclude that R.P. intended to aid in the commission of the burglary. While it is true, as R.P. points out, that his false statements to the police officer do not *compel* a finding of guilt because they could “indicate[] nothing more than a reluctance to involve himself” or C.N. (*Pinell v. Superior Court*, *supra*, 232 Cal.App.2d at p. 288), the fact that R.P. lied during his arrest makes it all the more reasonable for the court to have discounted R.P.’s story that he disapproved of the burglary and immediately took steps to separate himself from it. The court “was not obligated to believe” R.P.’s testimony that he was not involved, and on appeal we must accept the court’s credibility determinations. (*In re Juan G.*, *supra*, 112 Cal.App.4th at pp. 5-6.)

We acknowledge that the evidence that R.P. acted as a lookout to aid the burglary is less than overwhelming and may have permitted the conclusion that he was innocent. But it is the factfinder, “not the appellate court[,] that must be convinced of the defendant’s guilt beyond a reasonable doubt.” (*People v. Zamudio* (2008) 43 Cal.4th 327,

357-358.) As a result, on appeal "[t]he test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt." (*People v. Mincey* (1992) 2 Cal.4th 408, 432.) We conclude that substantial evidence permitted the juvenile court to reasonably conclude that R.P. aided and abetted the commission of the burglary.

III.
DISPOSITION

The judgment is affirmed.

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Humes, J.

We concur:

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Reardon, Acting P.J.

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Rivera, J.